

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SEVEN**

**GLADWIN PINES OPERATING, LLC d/b/a  
GLADWIN PINES NURSING AND  
REHABILITATION CENTER<sup>1</sup>**

**Employer**

**and**

**Case 07-RD-227480**

**AMBER ADAMS, an Individual  
Petitioner**

**and**

**UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION (USW),  
AFL-CIO, CLC<sup>2</sup>**

**Union**

**APPEARANCES:**

Grant T. Pecor, Esq., Grand Rapids, Michigan, for the Employer.

Amber Adams, Gladwin, Michigan, pro se.

Daniel Nadolski, Bay City, Michigan, for the Union.

**DECISION AND DIRECTION OF ELECTION**

The Employer is a limited liability company based out of Gladwin, Michigan, and it operates a skilled nursing facility.

---

<sup>1</sup> The Employer's name appears as it was amended at hearing.

<sup>2</sup> The Union's name appears as it was amended at hearing.

On September 17, 2018, the Petitioner filed the petition in the instant matter under Section 9(c) of the National Labor Relations Act (the Act), seeking to decertify the Union as the exclusive collective bargaining representative of the following unit of employees:

All full-time and regular part-time licensed practical nurses and registered nurses employed by the Employer at its Gladwin, Michigan facility located at 449 Quarter Street, Gladwin, Michigan; but excluding office clerical employees, managers, casual employees, guards and supervisors as defined in the Act.<sup>3</sup>

The bargaining unit consists of about 10 Licensed Practical Nurses (LPNs) and 9 registered nurses (RNs). The parties contend that the RNs are not professional employees within the meaning of Section 2(12) of the Act, and that an election pursuant to *Sonotone Corp.*, 90 NLRB 1236 (1950), is unnecessary. Based on the record and relevant Board law, I find that the RNs are professional employees, and direct a *Sonotone* election among the Employer's bargaining unit employees.

### **Procedural History**

The Union was certified as the collective bargaining representative of MidMichigan Gladwin Pines on April 24, 2007, in Case 07-RC-22625. In the Decision and Direction of Elections, the then Regional Director ordered a *Sonotone* election, as the parties stipulated, and the Regional Director found, that the RNs were professional employees as defined in the Act.<sup>4</sup> The Union and MidMichigan Gladwin Pines were parties to a collective bargaining agreement in effect from May 5, 2014 through April 9, 2017, which covered the LPNs and RNs. On about May 5, 2016, after purchasing the assets of MidMichigan Gladwin Pines, the Employer recognized the Union, and has been negotiating a collective bargaining agreement for the bargaining unit for more than one year.

Pursuant to the filing of the instant decertification petition, a hearing officer of the Board conducted a hearing on October 1, 2018. During the hearing, the parties stipulated that the LPNs are not professional employees within the meaning of Section 2(12) of the Act. The Employer also offered a stipulation reached between the parties that the RNs are likewise not professional employees within the meaning of Section 2(12) of the Act. That stipulation was denied, and the hearing officer gave the Employer, Union and Petitioner the opportunity to present evidence, witnesses, and oral arguments on the statutory indicia of the RNs as professional employees.

---

<sup>3</sup> The unit description was amended at hearing, and all parties stipulated that this unit is an appropriate unit within the meaning of Section 9(b) of the Act.

<sup>4</sup> The record contained no evidence or testimony about how or why RNs who were stipulated as professionals in 2007 had any significant change in their education, job duties, or level of discretion, to make them *not* be professionals under the Act for this current proceeding.

**Analysis and Application of Board Law to this Case**

**I. Are the RNs professional employees pursuant to Section 2(12) of the Act?**

Section 2(12)(a) and (b) of the Act defines a “professional employee” as:

- (a) any employee engaged in work: predominately intellectual and varied in nature; involving the consistent exercise of discretion and judgment in performance; of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time; requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital; or
- (b) any employee who has completed the specialized intellectual instruction and study described in the Act and is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

The Board has consistently and historically found registered nurses to be professional employees. *Centralia Convalescent Center*, 295 NLRB 42 (1989); *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765, 766-768 (1975). For instance, in *Centralia Convalescent Center*, the Board held that RNs were professional employees because the RNs graduated from approved nursing schools; were allowed to draw blood and perform IVs based on their status as RNs; and received a higher wage rate compared to LPNs. *Id.*

Similarly, the RNs in the present case are professionals for the same reasons cited in *Centralia Convalescent Center*. The Petitioner, an RN on the Ventilator-Dependent Unit, was the only bargaining unit employee to testify at the hearing. She is one of five RNs who work on the Ventilator-Dependent Unit. There is only one LPN who works on that unit. Petitioner testified that she holds a 2-year Associate degree for a Registered Nurse Certification from Mid Michigan College, and she is licensed by the State of Michigan as an RN. At her college, the LPN program was incorporated into her RN program, but Petitioner continued her schooling to earn her RN degree. She is currently working towards a degree at Walden University to become a Family Nurse Practitioner.

Petitioner is responsible for the care of about five patients. Her job duties include providing medications and delivering any ordered prescriptions to patients, per orders from a physician. There is only one physician and one nurse practitioner at the Employer’s facility who write the orders, and they are employed by Mid Michigan Health.<sup>5</sup> Petitioner also provides medical treatment, including wound care and tracheotomy care. Wound care includes pressure ulcers. For example, when a patient is bedridden and has a sore, Petitioner cleans the area surrounding the sore, applies medication to the wound, and covers it with a clean dressing/bandage to prevent the sore from progressing. Petitioner also provides tracheotomy care. This includes cleaning the open hole or wound surrounding a patient’s tracheotomy,

---

<sup>5</sup> Mid Michigan Health is a non-party employer.

applying ointment, and redressing the area. Petitioner has the discretion to assess a patient and decide whether the tracheotomy hole needs to be cleaned. Applying ointment and dressing the wound is ordered by a physician. If a patient is de-saturating or having difficulty breathing, Petitioner has the discretion to suction the mucus from the patient's tracheotomy tube. This emergency situation occurs about once per day. She also has the discretion to change the inner cannula (a medical term for the plastic device that slides inside the tracheotomy tube). She can do this without a doctor's order.

The Employer's Administrator, Tanny Baumann, testified that the starting wage for RNs is \$25 per hour and caps at about \$30. The prior collective bargaining agreement between the Union and MidMichigan Gladwin Pines indicated about a five-dollar per hour differential between the pay rate of RNs and LPNs.

Based on the foregoing reasons, I find the RNs to be professional employees.

## **II. Should a *Sonotone* self-determination election be conducted in this case?**

Section 9(b)(1) of the Act prohibits the Board from including professional employees in a unit with employees who are not professional employees, unless a majority of the professional employees vote for inclusion in such a unit. *Sonotone Corporation*, 90 NLRB 1236 (1950); *Pratt & Whitney*, 327 NLRB 1213, 1217-1218 (1999).

The Board's general rule is that a decertification election should be conducted in a bargaining unit that is coextensive with the recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *Westinghouse Electric*, 115 NLRB 530 (1956). However, the Board has determined that if a decertification election is held in a mixed unit of professional employees and non-professional employees, and the professional employees never had the opportunity to vote on their inclusion in such a mixed unit, they should have such an opportunity. *Utah Power & Light Company*, 258 NLRB 1059 (1981). The Employer relies on this case to argue that a *Sonotone* election is inappropriate. I find it unpersuasive that the converse of the holding in *Utah Power & Light Company* should be true: that since the RNs voted for inclusion in a mixed unit in the certification of the Union, they are not entitled the opportunity to vote in a *Sonotone* election for the decertification.

In *Westinghouse Electric Corp.*, 116 NLRB 1545, 1547 (1956) (*Westinghouse I*), the Board rejected the contention that *Sonotone* balloting was unnecessary where, six years prior, a group of professional employees already expressed their desire, under Section 9(b)(1) of the Act, in a *Sonotone* self-determination election. That holding was later reaffirmed in *Westinghouse Electric Corp.*, 129 NLRB 846, 848 (1960) (*Westinghouse II*), where the Board again determined that Section 9(b)(1) of the Act precludes the Board from joining professional and nonprofessional employees in a single unit without first giving the professionals an opportunity to vote on such inclusion. Thus, as the Board noted, the requirement that professional employees vote on whether to be included in a unit with nonprofessional employees applies "whether or not the professional employees have, on a prior occasion, been afforded such opportunity." *Id.*

More recently, in *American Medical Response, Inc.*, 344 NLRB 1406, 1408-09 (2005), the Board overruled the administrative law judge's finding that a *Sonotone* election was unnecessary where the professional employees in question had voted to be included in a combined professional/nonprofessional unit in a previous election. In setting aside the election and ordering a *Sonotone* election, the Board found that under Section 9(b)(1) of the Act and the principles of *Westinghouse I* and *Westinghouse II*, professional employees must be given the opportunity to decide whether they want to join a unit of nonprofessionals even if the professional employees were previously given the opportunity to vote on inclusion in a prior election. *See id.*

The Employer argues that the Region's reliance on *American Medical Response* is misplaced since its holding should be limited to its unique facts – the prior election was conducted according to state procedures (the California State Mediation and Conciliation Service), not those of the NLRB, and therefore did not comply with the mandatory *Sonotone* procedures. It also involved both an incumbent and a challenging union. However, I find these arguments unconvincing, given in particular that the Board's decisions in *Westinghouse I* and *Westinghouse II* also involved situations where, despite prior valid *Sonotone* elections, the Board ordered new *Sonotone* elections.

Based on the evidence presented at the hearing, and the authority cited above, I find that a *Sonotone* self-determination election is required in this matter. I direct an election in the following two voting groups:

#### **Voting Group A**

All full-time and regular part-time registered nurses employed by the Employer at its Gladwin, Michigan facility located at 449 Quarter Street, Gladwin, Michigan; but excluding office clerical employees, managers, casual employees, guards and supervisors as defined in the Act.

#### **Voting Group B**

All full-time and regular part-time licensed practical nurses employed by the Employer at its Gladwin, Michigan facility located at 449 Quarter Street, Gladwin, Michigan; but excluding office clerical employees, managers, casual employees, guards and supervisors as defined in the Act.

The employees in voting group A will be asked two questions on their ballot:

1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining?
2. Do you wish to be represented for purposes of collective bargaining by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union (USW), AFL-CIO, CLC?

If a majority of the professional employees in Voting Group A vote "yes" to the first question indicating their wish to be included in a unit with nonprofessional employees, they will be so included. Their vote on the second question will then be counted together with the votes of the non-professional employees. If the professional employees in Voting Group A vote against their inclusion with the nonprofessional employees in Voting Group B, their vote on the second question will then be separately counted to determine whether or not they wish to be represented by the Union.

### **Conclusions and Findings**

Based on the foregoing discussion and on the entire record, I find and conclude as follows:

1. The hearing officer's rulings are free from judicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. In accordance with Section 9(b) of the Act, I make the following unit determinations:

(a) If a majority of the full-time and regular part-time registered nurses in Voting Group A vote for inclusion in the same unit with the licensed practical nurses in Voting Group B, the following employees will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time licensed practical nurses and registered nurses employed by the Employer at its Gladwin, Michigan facility located at 449 Quarter Street, Gladwin, Michigan; but excluding office clerical employees, managers, casual employees, guards and supervisors as defined in the Act.

(b) If a majority of the full-time and regular part-time registered nurses in Voting Group A do not vote for inclusion in the same unit with the licensed practical nurses in Voting Group B, the following units will each constitute appropriate units for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Unit A:** All full-time and regular part-time registered nurses employed by the Employer at its Gladwin, Michigan facility located at 449 Quarter Street, Gladwin, Michigan; but excluding office clerical employees, managers, casual employees, guards and supervisors as defined in the Act.

**Unit B:** All full-time and regular part-time licensed practical nurses employed by the Employer at its Gladwin, Michigan facility located at 449 Quarter Street, Gladwin, Michigan; but excluding office clerical employees, managers, casual employees, guards and supervisors as defined in the Act.

### **Direction of Election**

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting groups set forth above. The employees in Voting Group A will vote whether or not they wish to be included in a unit with the employees in Voting Group B and the employees in both voting groups will vote whether or not they wish to be represented for purposes of collective bargaining by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union (USW), AFL-CIO, CLC.

#### **A. Election Details**

The election will be held on **Wednesday, October 24, 2018** from 6:00 a.m. to 8:00 a.m. and from 2:00 p.m. to 4:00 p.m. in the conference room at the Employer's facility located at 449 Quarter Street, Gladwin, Michigan.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **October 6, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Thursday, October 18, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

### D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found



appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: October 16, 2018.



---

Terry Morgan, Regional Director  
National Labor Relations Board, Region 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 300  
Detroit, MI 48226

Attachments